



**Federal Communications Commission  
Washington, D.C. 20554**

December 17, 2014

**DA 14-1844**

*In Reply Refer to:*

1800B3-DD/AJR

Released: December 17, 2014

Edward Czelada  
Smile FM  
3302 N. Van Dyke Road  
Imlay City, Michigan 48444

**In Re: WKKM(FM), Speaker Township, MI**  
Facility ID No. 93344  
File No: BPED-20130814ADM

**Application to Change Community  
of License**

Dear Mr. Czelada:

We have before us the captioned application, as amended, (the "Application") of Smile FM ("Smile"), licensee of noncommercial educational ("NCE") Station WKKM(FM), Speaker Township, Michigan (the "Station"), to upgrade the class of channel and change the community of license of the Station from Speaker Township to Grant Township, Michigan. For the reasons set forth below, we dismiss the Application.

**Background.** On July 1, 2012, Smile acquired the construction permit for the Station, which was then unbuilt.<sup>1</sup> This construction permit constituted the sole authorized radio station for Speaker Township. On August 9, 2013, Smile filed an application for a covering license (the "License Application"), and stated that the Station was constructed.<sup>2</sup> Smile also requested program test authority ("PTA").<sup>3</sup> The License Application and PTA were granted on August 21, 2013, and the Station commenced broadcast operations for several days after grant of the License Application until August 26, 2013.<sup>4</sup> The Station has remained silent since that time, except for the resumption of operations for seven days, pursuant to the grant of two Special Temporary Authorizations ("STAs").<sup>5</sup>

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<sup>1</sup> See File No. BAPED-20120213ABX.

<sup>2</sup> See File No. BLED-20130809AAQ at Exhibit 9.

<sup>3</sup> *Id.* at Section I, Item 5.

<sup>4</sup> See File No. BLSTA-20130927ACO at Exhibit 1.

<sup>5</sup> Specifically, on September 27, 2013, Smile requested an STA to permit the Station to remain silent pending the modification of its facilities. See *id.* On December 11, 2013, the STA request was granted, and the Station was permitted to remain silent for 180 days. On August 8, 2014, Smile notified the Commission that the Station had

On August 14, 2013, Smile filed the Application to upgrade and reallocate the Station from Channel 209A at Speaker Township to Channel 209B at Grant Township, Michigan, pursuant to Section 73.3573(g) of the Commission's Rules ("Rules").<sup>6</sup> In support of the Application, Smile contends that grant of the Application would not violate the Commission's prohibition on the removal of a community's sole local service because it does not believe that this policy applies to a "new, not yet licensed construction permit, without program test authority."<sup>7</sup> Additionally, Smile argues that the Application would result in a preferential arrangement of allotments under the FM Allotment Priorities.<sup>8</sup> Although the retention of the Station at Speaker Township or its reallocation to Grant Township would be first local services under Priority 3 at either community, Smile contends that Grant Township (population 1,891) would be favored because it is larger than Speaker Township (population 1,483). Finally, Smile believes that the proposed reallocation to Grant Township should not be presumed to be an additional station in the Port Huron, Michigan, urbanized area because the principal community signal of the proposed facility does not cover, and could not be modified, to cover more than 50 percent of the Port Huron Urbanized Area.<sup>9</sup> Accordingly, Smile urges grant of its Application.

**Discussion. Removal of Sole Local Service.** The Commission places a high priority (Priority 3) on providing and retaining a community's sole local transmission service. It strongly disfavors the removal of a community's sole local service as violative of this policy and also because any such removal would frustrate the public's expectation of continuing service from an operating station.<sup>10</sup> However, the Commission permits waiver of this policy "in the rare circumstances where removal of a local service might serve the public interest by, for example, providing a first reception service to a significantly sized population."<sup>11</sup>

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resumed operations on August 8, 2014. The Station operated for a seven-day period ending on August 15, 2014. On October 2, 2014, a second STA request was granted, authorizing the Station to remain silent until August 16, 2015. See File No. BLSTA-20140915ACM.

<sup>6</sup> 47 C.F.R. § 73.3573(g) (permitting the modification of an FM station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest, provided, *inter alia*, the reallocation would result in a preferential arrangement of allotments).

<sup>7</sup> See File No. BPED-20130814ADM at Exhibit 35.

<sup>8</sup> *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88, 90-93 (1982) ("*FM Assignment Policies*"). The FM allotment priorities are: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service, and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

<sup>9</sup> In the alternative, Smile seeks to rebut the presumption that the Station would be a Port Huron urbanized area station. See File No. BPED-20130814ADM at Exhibit 35.

<sup>10</sup> See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Memorandum Opinion and Order, 5 FCC Red 7094(1990) ("*Change of Community MO&O*"). For purposes of this policy, the Commission defines an existing service "as that provided by a station that is operational (*i.e.*, "on-the-air"). *Id.* at 7097 (¶ 19). By way of contrast, holders of unbuilt construction permits are permitted to change their communities of license without regard to the general prohibition because any such moves would not result in the loss of an "existing" service. See, *e.g.*, *Chatom and Grove Hill, Alabama*, Report and Order, 12 FCC Red 7644 (MMB 1997) (permitting the removal of a community's sole radio station because it was an unbuilt station).

<sup>11</sup> *Id.* at 7096 (¶ 17). In modifying its procedures to permit the filing of change of community proposals by application rather than rule making petitions, the Commission continued its policy disfavoring removal of sole local transmission service, subject to waiver on a case-by-case basis upon a compelling public interest showing. See

In this case, we find that grant of the Application would violate the prohibition on the removal of a community's sole local service. Smile admits that the Station went on the air after the License Application and program test authority were granted on August 21, 2013, and continued broadcasting for several days until August 26, 2013. Under these circumstances, we conclude that the Station was operational and, therefore, an existing service.<sup>12</sup> Our view is buttressed by the fact that Smile's decision to take the Station off-the-air was voluntary. We reject Smile's attempt to avoid the prohibition by intentionally depriving listeners in Speaker Township of a first local service as facially contrary to the public interest.

While the Commission has indicated that it would waive the prohibition on removal of a community's sole local service in "rare circumstances," Smile has not submitted a waiver request, attempting to make such a showing. Further, we do not find that the facts of this case fit into these "rare circumstances." For example, the Application would not provide a first full-time reception service under Priority 1 to a substantial population.<sup>13</sup> Likewise, no showing has been made that the Station had lost its transmitter site and that no new site could be obtained after an exhaustive search.<sup>14</sup> On the contrary, the proposed reallocation of the Station to Grant Township would, at most, be a first local service to a slightly larger community than its retention as a first local service at Speaker Township. The Commission has previously found that "this distinction is not the sort of compelling public interest benefit that would overcome our strong preference for retaining first local operating service."<sup>15</sup> Finally, while Smile suggests that the loss of service at Speaker Township could be remedied by conditioning the proposed reallocation on the completion of an upgrade for co-owned Station WHYT-FM, Goodland Township, Michigan, which would cover 100 percent of Speaker Township, we disagree. The Commission has stated on numerous occasions that reception service from nearby communities is not a substitute for local service.<sup>16</sup>

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*Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, 21 FCC Red 14212, 14229-30 (2006) (¶¶ 32-34).

<sup>12</sup> See, e.g., *Fort Bridger, Wyoming, and Woodruff, Utah*, Report and Order, 17 FCC Rcd 606 (MMB 2002) (finding that a previously unbuilt station was subject to the prohibition on removal of sole local service because a license application was subsequently granted and the station had commenced broadcast operations).

<sup>13</sup> Although Smile claims that the reallocation would provide a second full-time reception service to 29 persons under Priority 2, a staff engineering analysis reveals that there would not be a gain of second full-time reception service to any population.

<sup>14</sup> See, e.g. *John Neely, Esq., and David D. Oxenford, Esq.*, Letter, 26 FCC Rcd 10386, 10394-95 (MB 2011) (denying waiver of prohibition on removal of sole local service because the applicant had purchased the station with full knowledge that it lacked a transmitter site and had not demonstrated that it had diligently searched for alternative sites).

<sup>15</sup> See *Potts Camp and Saitillo, Mississippi*, Memorandum Opinion and Order, 16 FCC Rcd 16116 (2001), *aff'd, sub nom. Sisk v. FCC*, 62 Fed.Appx. 357 (D.C. Cir. 2003) (denying waiver of the prohibition on removal of a sole local service where both the existing and proposed arrangement of allotments triggered Priority 3 as first local services and the population of the move-in community was greater than the move-out community). While Smile alleges that the reallocation would provide a second NCE service to approximately 12,000 persons and a net gain in third, fourth, and fifth reception services to various populations, these are factors under Priority 4 and do not trigger the higher Allotment Priorities.

<sup>16</sup> See, e.g., *Royston and Commerce, Georgia*, Report and Order, 15 FCC Rcd 5676, 5679 (MMB 2000), *citing*, *Sarnac Lake, New York*, Report and Order, 6 FCC Rcd 5121 (MMB 1991), *recon. dismissed*, Memorandum Opinion and Order, 8 FCC Rcd 3066 (MMB 1993).

Accordingly, we conclude that it would not serve the public interest to reallocate the Station from Speaker Township to Grant Township because it would result in the removal of a sole local service.<sup>17</sup>

**Conclusion/Actions.** Accordingly, IT IS ORDERED, that the application of Smile FM, File No. BPED-20130814ADM, IS DISMISSED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>17</sup> In view of this finding, we need not reach the issue of whether the proposed reallocation to Grant Township should be presumed to be an additional service to the Port Huron urbanized area under Priority 4 or a first local service under Priority 3.